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# **ENVIRONMENTAL PROTECTION**

## **Collaborative EPA- State Effort Needed to Improve Performance Partnership System**

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Mr. Chairman and Members of the Committee:

I am pleased to be here to discuss our recent assessment of the National Environmental Performance Partnership System (NEPPS). NEPPS was established by a May 1995 agreement between the Environmental Protection Agency (EPA) and the states as a new framework for improving their working relationship, and for improving the effectiveness of states' environmental programs. Under the program, a state and EPA may enter into a Performance Partnership Agreement that identifies the state's environmental goals and priorities, and how both EPA and state officials are to address them. The two sides may also agree on a Performance Partnership Grant, which is intended to allow the state greater flexibility in targeting limited resources to meet its most pressing needs.

Both EPA and the states launched NEPPS to help address long-standing issues affecting their working relationship. Among these issues were concerns that EPA (1) is inconsistent in its oversight of states from one region to another, (2) sometimes micromanages the states' programs, (3) does not provide sufficient technical support for the states' programs increasingly complex requirements, and (4) often does not adequately consult the states before making key decisions affecting them.

In signing the agreement that established NEPPS, EPA and state leaders stated that they sought to "strengthen our protection of public health and the environment by directing scarce public resources toward improving environmental results, allowing states greater flexibility to achieve those results, and enhancing our accountability to the public and taxpayers." Among the key elements of NEPPS were (1) EPA's commitment to give states with strong environmental performance greater flexibility and autonomy in running their environmental programs and (2) the agreement between EPA and the states to develop effective "core" performance measures to better understand whether the states' programs are achieving their intended results.

Given the expectation among participants that NEPPS could deal with many of the issues that have long impeded the EPA-state relationship, the Chairman, Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations, asked us to examine the progress made by EPA and the states since the 1995 Agreement. In response to this request, our June 1999 report (1) identified the status of grants and agreements made under NEPPS between EPA and participating states, (2) examined the progress that EPA and the states have made in developing results-oriented performance measures to be incorporated into NEPPS agreements and grants to the states, (3) examined how EPA oversight may or may not have been changing in states that were participating in NEPPS, and (4) discussed the extent to which the use of these performance partnership agreements and grants had achieved the benefits envisioned for the states and the public.<sup>1</sup>

In summary, Mr. Chairman, we found the following:

- State participation in NEPPS grew from 6 pilot states in its initial year in fiscal year 1996 to 45 states by the end of fiscal year 1998. Of that number, 31 states had both Performance Partnership Agreements and Performance Partnership Grants with EPA in 1998; 12 states had grants only; 2 states had Agreements only; and 5 states did not participate at all.
- EPA and the states agree on the importance of measuring the outcomes of environmental activities rather than just the activities themselves, in order to help them better understand whether their programs are achieving their intended results. Despite a number of technical challenges (e.g., the inherent difficulty in quantifying certain results, and the difficulty of linking program activities to environmental results) and disagreements between EPA and the states on such matters as the degree to which states should be permitted to vary from the national core measures, EPA and state leaders have managed to agree on a set of core measures for fiscal

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<sup>1</sup> Environmental Protection: Collaborative EPA-State Effort Needed to Improve New Performance

year 2000 that are widely regarded by EPA and state officials as significantly improved from those negotiated in previous years.

- The initial expectation that participation in NEPPS would be accompanied by reduced federal oversight of states has thus far been realized to only a limited degree. We identified a number of instances among the six states that we visited where oversight reduction did accompany participation in the system. However, in other cases cited by both state and EPA regional officials, it was difficult to attribute reduced oversight directly to NEPPS participation. Other instances were cited where oversight had either remained the same or had actually increased.
- EPA and state participants cited a number of benefits associated with NEPPS noting, for example, that participation provided a means of getting buy-in for innovative and/or unique projects and served as a tool to divide an often burdensome workload more efficiently between federal and state regulators. Yet while participants from each state indicated that their participation in the voluntary program would probably continue, they also consistently expressed the view that the benefits of the program should be greater; that the program has yet to achieve its potential; and that improvements are needed. The 1995 Agreement anticipated the appropriateness of such reflection in calling for “a joint evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement.” We recommended in our report that such a joint evaluation process be initiated, and suggested a number of issues to be considered for attention during such a process.

## **Background**

Under NEPPS, states may voluntarily enter into “Performance Partnership Agreements” with their EPA regional offices. While there is considerable flexibility in how the agreements may be designed, they typically provide a means for EPA and the states to

negotiate such matters as (1) which problems will receive priority attention within the state programs, (2) what EPA's and the states' respective roles will be, and (3) how the states' progress in achieving clearly defined program objectives will be assessed. An important component of the Partnership Agreements is the use of a common set of national environmental indicators (called "Core Performance Measures") to measure the effectiveness and success of states' environmental programs. In their efforts to develop these Performance Measures, EPA and state officials have sought to move beyond counting the number of actions (such as the number of inspections conducted or environmental enforcement actions taken), and increasingly toward evaluating the impact of programs on the environment.

While NEPPS provides the overarching framework for developing partnership agreements, Performance Partnership Grants, authorized by the Congress in April 1996, serves as a major tool to implement them. This program allows states to request that funds from 2 or more of the 15 eligible categorical grants be combined to give governmental entities greater flexibility in targeting limited resources to their most pressing environmental needs. These grants are also intended to be used to better coordinate existing activities across environmental media and to develop multimedia programs. While the Partnership Agreements are designed to complement the Partnership Grants, states are free to negotiate both agreements and grants or to decline participation in NEPPS altogether.

### **Growth of State Participation in NEPPS**

In fiscal year 1996, NEPPS was initially tested on a pilot basis with six participating states. EPA and the states viewed the first year as a time to experiment with the new system and various ways to implement it. The number of participating states subsequently increased to 45 states in fiscal year 1998, although the extent of participation varied widely. For example, half the states have negotiated both Partnership Agreements and Partnership Grants through their lead environmental

agencies that cover most EPA programs; other states have substantially limited their participation and cover fewer programs.

States have also varied considerably in the detail and content of their Agreements. Senior officials in EPA's Office of State and Local Relations explained that the agency has not attempted to impose uniformity on the development of Partnership Agreements at this early stage of the NEPPS process, and has therefore refrained from issuing guidance on how the agreements should be structured. Hence, the agreements vary widely in content and emphasis, reflecting each individual state's conditions and priorities and reflecting the results of negotiations with their respective EPA regional offices.

### **Progress in Developing Results-Oriented Measures**

Both EPA and the individual states have had a number of efforts underway to develop effective performance measures to better understand whether their programs are achieving their intended results. Their collective efforts to develop such measures for NEPPS has centered around the Performance Measures that were negotiated between EPA and the Environmental Council of the States during the past several years (The Council is a national nonpartisan, nonprofit association of state and territorial environmental commissioners.). The effort faced a number of technical challenges inherent in developing defensible results-oriented measures. The results of activities designed to improve water quality, for example, can take years to appear, and the capability of many states to monitor a significant share of their waters is limited. Moreover, even if environmental conditions could be reliably and consistently measured, it may be particularly difficult to demonstrate the extent to which a specific government program affected that condition. Officials from Florida (which has made a significant commitment to measuring compliance rates and environmental indicators), for example, explained that such factors outside their control as economic activity and weather

conditions, make it particularly difficult to link program activities with changes in environmental conditions.

In addition to these technical challenges in developing results-oriented measures, the effort was also challenged by disagreements between EPA and the states on issues such as (1) the degree to which states should be permitted to vary from the national Performance Measures and (2) the composition of these measures, particularly regarding the degree to which pre-existing output measures should be retained as newer outcome measures are added. Overall, however, the states and EPA made progress in meeting these challenges. For example, officials in four of the six states whose programs we examined had developed and implemented their own measures to address their own priorities. At the same time, program officials in each of the six states also agreed to report information required for the national Performance Measures agreed upon between the Environmental Council of the States and EPA. In addition, while they maintained that further refinement will still be needed, EPA and state officials agreed on a set of fiscal year 2000 measures that, by most accounts, is a substantial improvement over those measures negotiated from previous years in that they are fewer in number (i.e., better targeted to address key goals) and generally more outcome-oriented.

### **Reductions in Oversight Attributable to NEPPS Have Thus Far Been Modest**

Instances of greater state flexibility and reduced EPA oversight tended to focus on reducing the frequency of reporting and, in some cases, the frequency of on-site reviews. Maine environmental officials, for example, noted that more frequent, and less formal, dialogue between the program staff and regional staff had replaced written reports, saving time and improving the level of cooperation between EPA and state staff. While Maine program officials attributed the reductions in part to the assignment by EPA's Boston regional office of a liaison for each state's delegated programs, they credited NEPPS with formalizing or legitimizing the changes. Likewise, Florida program officials identified sizable reporting reductions in its waste program as a result of a joint effort

with EPA included in the Partnership Agreement. Other instances were cited by officials in Georgia and Minnesota.

Aside from such individual instances of streamlining reporting requirements and similar tracking efforts, the large majority of the state officials we contacted generally maintained that participation in NEPPS had not yet brought about significant reductions in reporting and other oversight activities by EPA staff, nor had it resulted in significant opportunities for them to focus on other priorities or to shift resources to weaker program areas. EPA officials generally acknowledged this point, but they provided specific reasons why the agency's oversight of state programs has not significantly decreased as a result of NEPPS--and in some cases has actually increased. In this connection, we noted that environmental statutes or regulations sometimes prescribe the level of oversight required of EPA which, according to some headquarters and regional officials, leaves the agency with little room to scale it back. These officials also pointed to (1) audits that identified problems in some states' enforcement programs (such as the underreporting by states of significant violations and precipitous decreases in the number of state enforcement actions taken), which they believed called for greater oversight, and (2) the difficulty in scaling back oversight without measurable assurances that the states' programs experimenting with alternative compliance strategies are achieving their desired results.

At the same time, EPA officials cited a number of barriers preventing greater state flexibility that could be more readily addressed. For example, senior EPA officials in three of the four regional offices that we visited acknowledged that support for NEPPS within EPA varies. One senior regional official explained that many regional managers and staff are often more comfortable with pre-existing ways of doing business and are unsure as to how they can accomplish their work in the context of the partnership approach under NEPPS. He voiced the opinion that there may be a need for training EPA regional staff in NEPPS implementation. Another senior regional official said that some agency staff will only take NEPPS seriously when EPA's reward system is more

closely tied to their performance in implementing the program. Headquarters officials also acknowledged another problem cited by many of the state officials we contacted—that headquarters guidance, initiatives, and special requests sometimes arrived at the regions too late to be used effectively in regional-state Partnership Agreement negotiations, and that they were working to address the problem.

### **Benefits of NEPPS Participation Cited, But Full Potential Has Yet to be Realized**

Senior officials and program managers from each of the six states in our review agreed that NEPPS has provided their programs with worthwhile benefits, and that its potential for achieving a more effective partnership between EPA and the states was still worth pursuing. Among the examples cited were instances in which Partnership Agreements were used to more efficiently divide a heavy workload between regional and state staff, and in which states were able to take at least limited advantage of the flexibility in their Partnership Grant agreements to shift resources among their media programs. Overall, however, the most frequently cited benefit among both state and EPA regional participants was that the two-way negotiation process inherent in NEPPS has fostered more frequent and effective communication between regional and state participants and improved their overall working relationship.

At the same time, state officials almost unanimously expressed the view that the benefits from their investment of time and resources into NEPPS should be greater; that it has yet to achieve its potential; and that improvements are needed. Of particular note, almost all of the state officials we interviewed cited progress in achieving reduced oversight and greater autonomy as critical to the future success of NEPPS. They also cited the need to continue improving performance measures; address the barriers impeding greater acceptance of NEPPS among staff within both EPA and state agencies; determine how to make greater use of the flexibility under Partnership Grants to shift resources and

funding to address higher priorities; and improve how EPA's headquarters offices provide their input into state-regional NEPPS negotiations.

These concerns pose challenges for the future of NEPPS—challenges that were anticipated by the 1995 Agreement that launched the program which called for a joint evaluation system for EPA and the states to review the results of their efforts to ensure continuous improvement. On the basis of the information that can be gleaned from the experiences to date of participating states and regional offices, we concluded that it was now appropriate to undertake such a joint evaluation process. We recommended that EPA work with senior-level state officials to initiate a joint evaluation process that (1) seeks agreement on the key issues impeding progress in developing a more effective National Environmental Performance Partnership System and (2) develops mutually agreeable remedies for these issues. Among the issues we suggested that such a process could focus on were the following:

- Developing a set of flexible guidelines, to be used as a tool by state and EPA regional NEPPS negotiators, that could help to clarify the appropriate performance expectations and other conditions that states must meet to achieve reduced oversight in carrying out their environmental programs, and the type of reduced oversight (e.g., reduced frequency of reporting, greater autonomy in setting program priorities) that could be achieved.
- Identifying what additional work is needed to improve the national Core Performance Measures recently negotiated by EPA and state representatives for fiscal year 2000.
- Alleviating the resistance among some staff (both within EPA offices and among participating state agencies) toward implementing NEPPS through training efforts and other strategies.

- Determining what appropriate steps should be taken by EPA and the states to allow for greater use by states of the flexibility envisioned under the Performance Partnership Grant system to shift resources and funding among their media programs.
- Determining how effective public participation in the NEPPS process can best be ensured.
- Developing ways to improve communication among EPA's headquarters and regional offices and participating states to ensure that states are given clear and timely information on whether key elements of their NEPPS-related agreements have the full buy-in of key EPA offices.

In response to this recommendation, EPA pointed out that in March 1999, EPA and the Environmental Council of the States agreed in principle to conduct such a joint evaluation and that it would review many of the issues cited in our recommendation. Since that time, however, progress has been limited. According to an official with the agency's Office of State and Local Relations, EPA and the Council have yet to agree on such basic issues as who should undertake the evaluation and what its scope should be. Furthermore, it is unclear when final resolution will be reached. Our findings suggest that future support for this program will depend heavily on the timely resolution of many of the barriers that have thus far impeded its effectiveness. Therefore, we believe timely efforts by EPA and the Council to identify what specific issues are to be addressed, and to identify a timetable for addressing them, would be important steps in expanding both the participation in, and effectiveness of, this important program.

This concludes my prepared statement, Mr. Chairman. I would be pleased to address any questions that you or other Members of the Committee may have.

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